

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

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ROBERT R. DI TROLIO
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CARROLL CAUDLE,

Plaintiff,

VS.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

No. 03-1263-T/An

ORDER GRANTING MOTION FOR APPROVAL OF ATTORNEY FEES

On July 14, 2004, the Court entered an order reversing the Commissioner of Social Security's decision finding the plaintiff, Carroll Caudle, not disabled, and remanded the claim for a third administrative hearing. Judgment was entered on July 20, 2004. On August 12, 2004, plaintiff filed a motion for approval of attorney fees pursuant to the Social Security Act, 42 U.S.C. § 406(b) and the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). The Court entered an agreed order on October 5, 2004, awarding plaintiff \$5,000.00 under the EAJA, but finding the issue of whether fees should be awarded under § 406(b) premature because it had not yet been determined that plaintiff was entitled to past-due benefits.

Following further administrative proceedings, benefits were awarded to plaintiff, including past-due benefits. On April 1, 2005, plaintiff filed a supplemental motion for the

approval of attorney fees pursuant to 42 U.S.C. § 406(b) and the EAJA. The Commissioner has not responded to the motion.

Under § 406(b), in social security disability cases attorney fees may not exceed 25% of the past-due benefits to which a claimant is entitled. The Social Security Administration generally withholds 25% of past-due benefits for the potential payment of those fees. In this case, as in many social security cases, the plaintiff and his attorney entered into a contingent-fee agreement in which it was specifically agreed that counsel would receive that 25% fee. Such contingent-fee agreements should be honored by the Court as long as the resulting fee is reasonable, and there are no other factors warranting a reduction. Gisbrecht v. Barnhart, 535 U.S. 789 (2002).

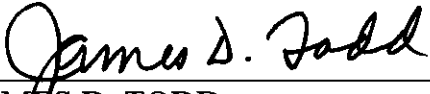
In this case, the Social Security Administration withheld 25% of plaintiff's past-due benefits, in the sum of \$19,020.55, for the payment of attorney fees under § 406(b). From that amount, plaintiff states that the Commissioner has been asked to approve a fee of \$6,995.00 for work done at the administrative level. Thus, attorney fees may be awarded for work done before this Court in an amount up to \$12,025.55, the remaining withheld funds.


In cases such as this one, where plaintiff has sought an award of fees for the same work under both the EAJA and § 406(b), the EAJA award must be offset against the award payable out of past-due benefits. See Pub. L. No. 99-80, § 3, 99 Stat. 186 (1985) (set out as a note following 28 U.S.C. § 2412). This ensures that there is no double recovery, and

also allows the claimant to receive more of the past-due benefits. See Gisbrecht, 535 U.S. at 796-97.

The Court finds that a total fee of \$12,025.00, as requested by plaintiff and his counsel, is reasonable. That amount will be offset by the \$5,000.00 already paid to counsel under the EAJA pursuant to the Court's prior order. Accordingly, pursuant to 42 U.S.C. § 406(b), the Court hereby APPROVES a fee of \$7,025.00, and the Social Security Administration is directed to forward that amount to plaintiff's counsel out of the past-due benefits withheld. The Social Security Administration will forward the remainder of the past-due benefits withheld to the plaintiff.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE


DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 38 in case 1:03-CV-01263 was distributed by fax, mail, or direct printing on April 28, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT